

**EXHIBIT C**  
**DRAFT**  
**BUSINESS ASSOCIATE AGREEMENT**  
**Between**  
**WASHINGTON STATE HEALTH CARE AUTHORITY**  
**And**  
**[CONTRACTOR'S LEGAL NAME]**

**THIS AGREEMENT** is entered into by the WASHINGTON STATE HEALTH CARE AUTHORITY ("HCA") and [INSERT CONTRACTOR'S LEGAL NAME] ("CONTRACTOR"). Collectively, these are the Parties to this Agreement.

**THE PURPOSE OF THIS AGREEMENT** is to delineate the Parties' respective responsibilities, identify areas in which they will assist each other, and minimize duplication of effort while complying with the requirements of HIPAA and its Privacy Rules. [Health Insurance Portability and Accountability Act of 1996, 42 USCA 1320d-d8, and 45 CFR 160 et. seq.].

45 CFR 164.504(e)(1) requires a written agreement between a "covered entity" and a "business associate" limiting the use and disclosure of Protected Health Information (PHI).

The Parties acknowledge that HCA is a "hybrid covered entity." To the extent CONTRACTOR is HCA's business associate, this Agreement, in part, is satisfactory assurance that CONTRACTOR will appropriately safeguard PHI in conformance with 45 CFR 164.502(e), 45 CFR 164.532(d) and (e) (2002) and other applicable provisions of the HIPAA rules. This Agreement satisfies HIPAA's requirement for a "Business Associate Agreement" between a covered entity and the business associate.

This Agreement applies to PHI provided to one party by the other or maintained by either party for the purposes described in the Agreement.

This Agreement applies whether the PHI format is electronic, handwritten, typed or digital, stored in either magnetic or optical media for the purpose of assisting HCA to administer health coverage pursuant to RCW 41.05 et. seq.

**THEREFORE, IT IS MUTUALLY AGREED THAT:**

**Section 1: STATEMENT OF WORK**

1.1 Pursuant to a separate agreement between the parties, CONTRACTOR will provide necessary personnel, services, and equipment to assist HCA in administering employee benefits, including health coverage (the "Underlying Agreement"). In accordance with the HIPAA Privacy Rules, the Parties agree to the following obligations and activities.

1.2.1 CONTRACTOR agrees to:

- 1.2.1 Use or disclose PHI only as permitted or required by this Agreement or as required by law.
  - 1.2.2 Apply the “minimum necessary” standard articulated in HIPAA to disclosures of PHI.
  - 1.2.3 Use appropriate reasonable safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement.
  - 1.2.4 Report to HCA any use or disclosure of PHI not provided for by this Agreement of which CONTRACTOR becomes aware. If unauthorized disclosure of PHI occurs, CONTRACTOR will mitigate any resulting harm to the extent practicable.
  - 1.2.5 Provide HCA with access to PHI when requested within a reasonable time.
  - 1.2.6 Make internal records, practices, policies and procedures about the use and disclosure of PHI received available to HCA within a reasonable time for use by the federal Secretary of Health and Human Services or the Office of Civil Rights (OCR) to determine HCA’s compliance with the HIPAA Privacy Rules.
  - 1.2.7 Notify HCA when PHI is requested that has been previously provided to CONTRACTOR. HCA and CONTRACTOR will determine whether CONTRACTOR has received a duplicate request, or whether CONTRACTOR has the original or sole copy of the PHI.
  - 1.2.8 Notify HCA of all requests made by an individual to access and amend his or her PHI contained in a designated record set, including information held by CONTRACTOR, if appropriate. CONTRACTOR shall not deny any individual’s request for PHI, but will instead refer such requests to HCA for management and response.
  - 1.2.9 Provide HCA with information collected in accordance with this Agreement, to permit HCA to respond to an individual’s request for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
- 1.3 CONTRACTOR may use PHI for CONTRACTOR’S management and administration and to carry out CONTRACTOR’S legal responsibilities if a law requires such disclosures, or CONTRACTOR obtains reasonable assurances that:
- 1.3.1 PHI will remain confidential; and
  - 1.3.2 PHI will be used or further disclosed only as required by law; or
  - 1.3.3 PHI will be used for the purpose for which it was disclosed; and
  - 1.3.4 HCA is notified of any instances in which the confidentiality of the information has been breached.
- 1.4 CONTRACTOR may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1).
- 1.5 HCA shall notify CONTRACTOR of:
- 1.5.1 Any limitation(s) in HCA’s notice of privacy practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect CONTRACTOR’S use or disclosure of PHI.
  - 1.5.2 Any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect CONTRACTOR’S use or disclosure of PHI.
  - 1.5.3 Any restriction to the use or disclosure of PHI to which HCA has agreed in accordance with 45 CFR 164.522, to the extent that such restriction may affect CONTRACTOR’S use or disclosure of PHI.
  - 1.5.4 Receipt of an individual’s request to access or amend his or her PHI contained in a “designated record set.” CONTRACTOR and HCA shall coordinate the return of PHI in either Party’s possession so that the amendment can occur. Amended PHI will then be returned. Such return and amendment shall occur in a timely manner, compliant with HIPAA.

- 1.6 HCA shall not request CONTRACTOR to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by HCA.

## **Section 2: PERIOD OF PERFORMANCE**

This Agreement shall begin upon execution of this Agreement and shall remain in effect until modifications are deemed necessary and mutually acceptable changes are negotiated. Modifications shall not be binding unless they are in writing and signed by authorized personnel of the respective Parties.

## **Section 3: TERMINATION AND SAVINGS CLAUSE**

- 3.1 If applicable federal or state laws are amended so that fulfillment of the terms of this Agreement are not feasible or the terms of the agreement become unnecessary, HCA and CONTRACTOR shall be discharged from further obligation created by this Agreement.
- 3.2 If this Agreement is superseded, then this Agreement is terminated in regard to superceded terms and conditions. The remainder of the provisions of this Agreement shall survive such termination if not superseded.

## **Section 4: PERIODIC REVIEW AND AMENDMENT**

- 4.1 The need for modifications or amendments to this Agreement shall be periodically reviewed and evaluated by mutual determination of the Parties. Such review shall not occur more frequently than annually, or when HIPAA is amended, whichever is earlier.
- 4.2 The Parties agree to amend this Agreement from time to time when it becomes necessary for the Parties to comply with the requirements of the HIPAA Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

## **Section 5: INDEPENDENT CAPACITY**

The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees of the other Party.

## **Section 6: BREACH**

CONTRACTOR'S breach of a material provision of this agreement may be grounds for termination of other contracts between the parties and is grounds for HCA to discontinue disclosure of PHI to CONTRACTOR until the breach is cured to the mutual satisfaction of the parties.

## **Section 7: DISPUTES**

In the event that a dispute arises under this Agreement, a Dispute Board shall determine it in the following manner:

- 7.1 Each Party to this Agreement shall appoint one member to the Dispute Board.
- 7.2 The members so appointed shall jointly appoint an additional member to the Dispute Board.
- 7.3 The Dispute Board shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute.
- 7.4 The determination of the Dispute Board shall be final and binding on the Parties.
- 7.5 As an alternative to this process, either of the Parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

#### **Section 8: GOVERNANCE**

- 8.1 Activities under the Agreement shall be performed in accordance with Washington State law and regulations, and with HIPAA and its attendant regulations as promulgated by the U.S. Department of Health and Human Services (HHS), the Center for Medicare and Medicaid Services (CMS), and the federal Office of Civil Rights (OCR).
- 8.2 Any reference in this Agreement to a section in the HIPAA Privacy Rule means the section as in effect or as amended. Any ambiguity in this Agreement shall be resolved to permit HCA to comply with the HIPAA Privacy Rule.

#### **Section 9: SEVERABILITY**

If any provision of this Agreement shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision. If such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, the provisions of this Agreement are declared severable.

#### **Section 10: CONTRACT MANAGEMENT**

The program manager for each of the Parties shall be responsible for and shall be the contact person for all communications regarding the performance of this Agreement.

- 10.1 The Program Manager for HCA is : *[Insert name, title, address and phone number]*
- 10.2 The Program Manager for CONTRACTOR is *[Insert name, title, address and phone number]*

#### **Section 11: RECORDS RETENTION AND MANAGMENT**

All records and reports relating to this Agreement shall be retained by the CONTRACTOR for a minimum of six years after termination of this Agreement, unless returned to HCA. In the event an audit, litigation, or other action involving records is initiated prior to the end of such six-year period, records shall be maintained for a minimum of six years following resolution of such action.

#### **Section 12: RETURN OR DESTRUCTION OF RECORDS CONTAINING PHI TO HCA**

Except as otherwise provided by contract or agreement, CONTRACTOR shall return or destroy all relevant records containing PHI received from HCA at the termination of this Agreement, and CONTRACTOR shall keep no copies of such PHI. If return or destruction of records containing PHI is not feasible, CONTRACTOR may keep the records containing PHI as long as CONTRACTOR'S use or disclosure of PHI is limited to the purposes that make return or destruction of the PHI infeasible and as long as confidentiality protections of this Agreement are applied.

### **Section 13: AGENTS AND SUBCONTRACTORS**

CONTRACTOR shall ensure that its obligations under this Agreement are passed through to all its agents and subcontractors when an agent or subcontractor is providing services that CONTRACTOR contracted to perform for HCA.

### **Section 14: DEFINITIONS**

- 14.1 Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E. (HIPAA Privacy Rule)
- 14.2 **"Protected Health Information (PHI)"** is defined at 45 CFR 164.501, and is individually identifiable health information that is transmitted by electronic media, maintained in any medium constituting electronic media, or transmitted or maintained in any other form or medium. PHI does not include information that is expressly excluded by HIPAA. (45 CFR 164.501)
- 14.3 **"Individually identifiable health information"** includes demographic information collected from an individual, and is information created or received by a health care provider, health plan, employer or health care clearinghouse related to the past, present or future physical or mental health or condition of an individual that identifies the individual or regarding which information there is a reasonable basis to believe that the information can be used to identify the individual. (5 CFR 160.103 (2002))

IN WITNESS WHEREOF, the Parties have executed this Agreement.

STATE OF WASHINGTON  
HEALTH CARE AUTHORITY

[CONTRACTOR'S LEGAL NAME]

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: Director, Legal and Contract Services

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM ONLY:

CHRISTINE O. GREGOIRE

Attorney General

By: Melissa A. Burke-Cain, Senior Counsel